

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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METSO MINERALS, INC.,	:
Plaintiff,	:
-against-	:
POWERSCREEN INTERNATIONAL	:
DISTRIBUTION LIMITED, TEREX	:
CORPORATION, POWERSCREEN NEW	:
YORK, INC., and EMERALD EQUIPMENT	:
SYSTEMS, INC.,	:
Defendants.	:
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06-CV-01446(ADS)(EBT)

ORAL ARGUMENT REQUESTED

**DEFENDANTS' NOTICE OF COMBINED MOTION FOR
CLAIM CONSTRUCTION AND FOR SUMMARY JUDGMENT**

Defendants Powerscreen International Distribution Limited, Terex Corporation, Powerscreen New York, Inc., and Emerald Equipment Systems, Inc. (collectively, "Defendants"), hereby move: (i) pursuant to *Markman v. Westview Instruments, Inc.*, 52 F. 3d 967, 976 (Fed. Cir. 1995), for construction of the claim terms of United States Patent No. 5,577,618; (ii) pursuant to Rule 56 of the Federal Rule of Civil Procedure, Rule 56.1 of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York, and this Court's Individual Motion Practices for summary judgment of non-infringement of United States Patent No. 5,577,618; and (iii) to preclude Plaintiff's claim for willful infringement and enhanced damages.

In support of this motion and annexed hereto are: (i) Defendants' Rule 56.1 Statement of Material Fact; (ii) Defendants' Memorandum of Law in Support of the Combined Motion for Claim Construction and for Summary Judgment; (iii) the supporting declaration of George Yankwitt, and exhibits attached thereto, certain of which are filed under seal with the Clerk of

the Court pursuant to the Amended Protective Order in place; (iv) the supporting declaration of Joseph Daly; (v) the supporting declaration of Frank Loeffler; and (vi) the supporting declaration of James Harkin.

WHEREFORE, for the reasons set forth in Defendants' Memorandum of Law in Support of the Motion, Rule 56.1 Statement of Material Fact, and the declarations, incorporated by reference herein, Defendants respectfully move this Court to:

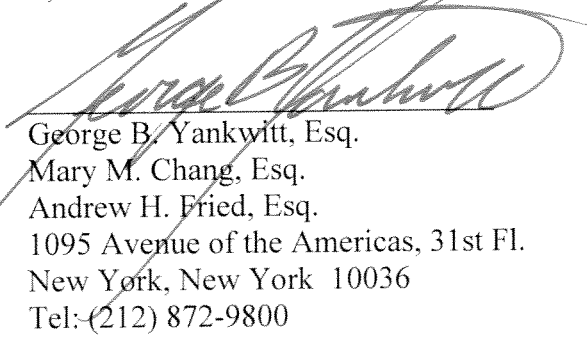
- (i) construe the claim terms of United States Patent No. 5,577,618;
- (ii) enter summary judgment that Defendants' products do not infringe the claims of United States Patent No. 5,577,618, either literally or under the doctrine of equivalents;
- (iii) preclude Plaintiff from its claim for willful infringement and enhanced damages; and
- (iv) grant such other relief as determined by the Court.

Dated: July 2, 2009

Respectfully submitted,

SQUIRE, SANDERS & DEMPSEY L.L.P.

By:



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Corporation, Powerscreen New York,
Inc., and Emerald Equipment Systems,
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